
A BILL FOR AN ACT

RELATING TO LICENSING.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that the practice of
2 behavior analysis in Hawaii affects the public's health safety,
3 and welfare. Accordingly, the practice of behavior analysis
4 should be subject to regulation and control to protect the
5 public from the unqualified practice of behavior analysis and
6 from unprofessional conduct by persons licensed to practice
7 behavior analysis.

8 The purpose of this Act is to establish licensing
9 requirements for the practice of behavior analysis.

10 SECTION 2. The Hawaii Revised Statutes is amended by
11 adding a new chapter to be appropriately designated and to read
12 as follows:

13 **"CHAPTER**

14 **BEHAVIOR ANALYSTS**

15 **§ -1 Definitions.** For the purposes of this chapter:

16 "Applied behavior analysis" means interventions that are
17 based on scientific research and the direct observation and
18 measurement of behavior and the environment.



1 "Applied behavior analysis direct contact technician" means
2 an individual who directly implements applied behavior analysis
3 services.

4 "Behavior Analyst Certification Board" means the nationally
5 accredited Behavior Analyst Certification Board or its
6 successor.

7 "Department" means the department of commerce and consumer
8 affairs.

9 "Director" means the director of commerce and consumer
10 affairs.

11 "Licensed assistant behavior analyst" means a person:

12 (1) Who is under the supervision of a licensed behavior
13 analyst engaged in the practice of behavior analysis
14 and who uses the title of licensed assistant behavior
15 analyst;

16 (2) Who has been issued a license under this chapter; and

17 (3) Whose license is in effect and not revoked, suspended,
18 or encumbered.

19 "Licensed behavior analyst" means a person:

20 (1) Who engages in the practice of behavior analysis and
21 uses the title of licensed behavior analyst;



(2) Who has been issued a license under this chapter; and

(3) Whose license is in effect and not revoked, suspended,
or encumbered.

"Practice of behavior analysis" means the design,
implementation, and evaluation of instructional and
environmental modifications to produce socially significant
improvements in human behavior. Practice of behavior analysis
includes the empirical identification of functional relations
between behavior and environmental factors, known as functional
assessment and analysis. Behavior analysts utilize contextual
factors, motivating operations, antecedent stimuli, positive
reinforcement, and other consequences to help people develop new
behaviors, increase or decrease existing behaviors, and emit
behaviors under specific environmental conditions. Practice of
behavior analysis expressly excludes psychological testing,
diagnosis of a mental or physical disorder, neuropsychology,
psychotherapy, cognitive therapy, sex therapy, psychoanalysis,
hypnotherapy, and long-term counseling as treatment modalities.

§ -2 Behavior analyst program. There is established a
behavior analyst program within the department to be
administered by the director.



1 **§ -3 License required.** (a) Except as specifically
2 provided in this chapter, no person shall engage in the practice
3 of behavior analysis or use the title "licensed behavior
4 analyst", "behavior analyst", "licensed assistant behavior
5 analyst", or "assistant behavior analyst" without a valid
6 license issued pursuant to this chapter.

7 (b) Any person who violates this section shall be subject
8 to a fine of not more than \$ for each separate
9 offense. Each day of each violation shall constitute a separate
10 offense. The director may initiate a civil action to collect
11 the fine imposed under this section in accordance with rules
12 adopted by the director.

13 **§ -4 Powers and duties of the director.** In addition to
14 any other powers and duties authorized by law, the director
15 shall have the powers and duties to:

16 (1) Grant, deny, renew, refuse to renew, restore,
17 terminate, reinstate, condition, restrict, suspend, or
18 revoke a license issued pursuant to this chapter;

19 (2) Grant permission to a person to practice behavior
20 analysis and to use the title of "licensed behavior
21 analyst" or "licensed assistant behavior analyst" or a



1 description indicating that the person is a licensed
2 behavior analyst or licensed assistant behavior
3 analyst in this State;

4 (3) Adopt, amend, or repeal rules pursuant to chapter 91
5 as the director finds necessary to carry out this
6 chapter;

7 (4) Administer, coordinate, and enforce this chapter;

8 (5) Discipline a licensed behavior analyst or licensed
9 assistant behavior analyst on grounds specified by
10 this chapter or chapter 436B or for any violation of
11 rules adopted by the director pursuant to this
12 chapter; and

13 (6) Refuse to license a person for failure to meet the
14 licensing requirements in this chapter or for any
15 reason specified by this chapter as grounds to
16 discipline a behavior analyst or assistant behavior
17 analyst.

18 **§ -5 Fees; disposition.** (a) Upon issuance of a new
19 license and at each license renewal period, each behavior
20 analyst or assistant behavior analyst shall pay a fee of



1 \$, which shall be deposited into the compliance
2 resolution fund established pursuant to section 26-9(o).

3 (b) Application fees paid pursuant to this chapter shall
4 not be refundable. Pursuant to section 26-9(1), the director
5 shall establish examination, reexamination, license, renewal,
6 restoration, penalty, and other fees relating to the
7 administration of this chapter by rule.

8 (c) Fees assessed pursuant to this chapter shall be used
9 to defray costs incurred by the department in implementing this
10 chapter.

11 **§ -6 Exemptions.** (a) This chapter is not intended to
12 restrict the practice of other licensed or credentialed
13 healthcare practitioners practicing within their own recognized
14 scopes of practice and shall not apply to:

15 (1) A person working within the scope of practice or
16 duties of another licensed profession that overlaps
17 with the practice of behavior analysis; provided that
18 the person does not purport to be a behavior analyst
19 or assistant behavior analyst;

20 (2) An applied behavior analysis direct contact technician
21 or family member implementing a plan within the home,



1 who acts under the extended authority and direction of
2 a licensed behavior analyst or a licensed assistant
3 behavior analyst;

- 4 (3) A behavior analyst who practices with nonhuman or
5 nonpatient clients or consumers including but not
6 limited to applied animal behaviorists and
7 practitioners of organizational behavior management;
- 8 (4) A matriculated graduate student or postdoctoral fellow
9 whose activities are part of a defined behavior
10 analysis program of study, practicum, or intensive
11 practicum; provided that the student's or fellow's
12 activities or practice is directly supervised by a
13 licensed behavior analyst in the State or an
14 instructor in a Behavior Analyst Certification Board-
15 approved course sequence; or

- 16 (5) An individual pursuing experience in behavior analysis
17 consistent with the Behavior Analyst Certification
18 Board's experience requirements; provided that the
19 experience is supervised by a licensed behavior
20 analyst in the State.



(b) Nothing in this chapter shall be construed to prevent any licensed psychologist from practicing behavior analysis in this State as long as the person is not in any manner held out to the public as a "licensed behavior analyst", "behavior analyst", "licensed assistant behavior analyst", or "assistant behavior analyst" and the behavior analysis services provided by the licensed psychologist are within the licensed psychologist's recognized scope of practice.

§ -7 Application for licensure. (a) The department shall issue a license under this chapter to an applicant for behavior analyst if the applicant provides satisfactory evidence to the department that the applicant meets the requirements for licensure contained in this chapter and rules adopted by the director and if the applicant for behavior analyst:

- (1) Successfully passed the Board Certified Behavior Analyst examination;
- (2) Maintains active status with the Behavior Analyst Certification Board as a board certified behavior analyst; and
- (3) Pays all fees for licensure established by the director.



(b) The department shall issue a license under this chapter to an applicant for assistant behavior analyst if the applicant provides satisfactory evidence to the department that the applicant meets the requirements for licensure contained in this chapter and rules adopted by the director and if the applicant for assistant behavior analyst:

(1) Successfully passed the Board Certified Assistant Behavior Analyst examination;

(2) Maintains active status with the Behavior Analyst Certification Board as a board certified assistant behavior analyst;

(3) Provides proof of ongoing supervision by a licensed behavior analyst who is a current board certified behavior analyst in a manner consistent with the Behavior Analyst Certification Board's requirements for supervision of board certified assistant behavior analysts; and

(4) Pays all fees for licensure established by the director.

§ -8 Licensed behavior analyst supervision required. No licensed assistant behavior analyst shall practice behavior



1 analysis under this chapter except under the ongoing supervision
2 of a licensed behavior analyst.

3 **§ -9 Licensure by endorsement.** The director may issue a
4 license by endorsement to an applicant who holds a current and
5 unencumbered license as a behavior analyst or assistant behavior
6 analyst in another state; provided that the requirements for a
7 license in that state are deemed by the director to be
8 equivalent to or higher than the current requirements for
9 licensure in this State.

10 **§ -10 Renewal of license.** Licenses issued pursuant to
11 this chapter shall be valid for three years and shall be renewed
12 upon the payment of a renewal fee within sixty days before the
13 expiration of the license. Failure to renew a license shall
14 result in forfeiture of that license. Licenses that have been
15 forfeited may be restored within one year of the forfeiture date
16 upon payment of renewal and restoration fees. Failure to
17 restore a forfeited license within one year shall result in the
18 automatic termination of the license. A person whose license
19 has been terminated pursuant to this section shall be required
20 to reapply for a new license as a new applicant.



1 § -11 Grounds for refusal to renew, reinstate, or
2 restore a license and for revocation, suspension, denial, or
3 condition of a license. (a) In addition to any other acts or
4 conditions provided by law, the director may refuse to renew,
5 reinstate, or restore and may deny, revoke, suspend, or
6 condition in any manner any license for any one or more of the
7 following acts or conditions on the part of a licensee or
8 license applicant:

9 (1) Failure to meet or to maintain the conditions and
10 requirements necessary to qualify for the granting of
11 a license;

12 (2) Engaging in false, fraudulent, or deceptive
13 advertising, or making untruthful or improbable
14 statements in advertising;

15 (3) Engaging in the practice of behavior analysis while
16 impaired by alcohol, drugs, physical disability, or
17 mental instability;

18 (4) Procuring a license to practice behavior analysis
19 through fraud, misrepresentation, or deceit;



- 1 (5) Aiding and abetting an unlicensed person to directly
2 or indirectly perform activities requiring a license
3 to practice behavior analysis;
- 4 (6) Engaging in professional misconduct, incompetence,
5 gross negligence, or manifest incapacity in the
6 practice of behavior analysis;
- 7 (7) Engaging in conduct or a practice contrary to
8 recognized standards of ethics for the practice of
9 behavior analysis;
- 10 (8) Violating any condition or limitation imposed on a
11 license to practice behavior analysis by the director;
- 12 (9) Engaging in the practice of behavior analysis in a
13 manner that causes injury to one or more members of
14 the public;
- 15 (10) Failing to comply with, observe, or adhere to any law
16 in a manner that causes the director to determine that
17 the applicant or holder is unfit to hold a license;
- 18 (11) Having a license revoked or suspended or other
19 disciplinary action by any state or federal agency for
20 any reason that is provided by the applicable
21 licensing laws or by this section;



1 (12) Having been convicted or pleaded nolo contendere to a
2 crime directly related to the qualifications,
3 functions, or duties of the practice of behavior
4 analysis;

5 (13) Failing to report in writing to the director any
6 disciplinary decision issued against the licensee or
7 applicant in another jurisdiction within thirty days
8 of the disciplinary decision;

9 (14) Employing, whether gratuitously or for pay, any person
10 not licensed pursuant to this chapter to perform the
11 functions or duties of the practice of behavior
12 analysis; or

13 (15) Violating this chapter, chapter 436B, or any rule or
14 order of the director.

15 (b) Any licensee or applicant who violates this section
16 may also be fined not more than \$ per violation, as
17 established by the director by rule."

18 SECTION 3. This Act shall take effect upon its approval.



Report Title:

Licensing; Practice of Behavior Analysis; Behavior Analysts;
Assistant Behavior Analysts; Behavior Analysis Program

Description:

Establishing the behavior analysis program within the department of commerce and consumer affairs. Establishes licensing requirements for behavior analysts and assistant behavior analysts. (SD1)

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